accused was with her on all the remaining occasions and that except on one occasion she herself regulated her charges. The reply to the first question was that the accused was fond of having sexual intercourse with her and had not to pay for it and that was why he was following her and spending his time and money on her. This is taking one to be too credulous and to ask one to think that the moon is made of green cheese.

The appeal is dismissed.

Appeal dismissed.

INNOCENT v. PUBLIC PROSECUTOR

[O.Cr.J. (Mohamed Azmi J.) February 25, 1971]

[Kuala Lumpur — Criminal Application No. 3 of 1971]

Criminal Law and Procedure — Appeal — Petition of — Application for extension of time to file — Discretion of court to grant application — Criminal Procedure Code (Cap. 6), ss. 307(iii) and 310.

The appellant applied for extension of time to file the petition of appeal. It appeared that the copy of the grounds of decision was not served on the appellant who was serving sentence in Pudu Prison, but was sent to his wife. The appellant was therefore unable to file the petition within ten days of receipt of the copy of the grounds of decisions.

Held: in the circumstances of this case and in order that substantial justice may be done, the application to file the petition of appeal out of time should be granted.

Case referred to:-

(1) *Veerasingam* v. *Public Prosecutor* [1958] M.L.J. 76.

MOTION.

M. Edgar for the appellant.

Mohamed Adan bin Dato Shaib (Deputy Public Prosecutor) for the respondent.

Mohamed Azmi J.: This is an application by notice of motion for extension of time for filing petition of appeal.

The appellant was charged under section 420 of the Penal Code on three counts *vide* Kuala Lumpur sessions court arrest case No: 36 of 1969. On January 14, 1971, he was convicted by the president, sessions court, and sentenced to nine months imprisonment on each of the three charges. On the same day, he personally filed a notice of appeal against conviction and sentence giving his address at No: BB 10, Ipoh Road Gardens, 4th Mile Ipoh Road, Kuala Lumpur, and by letter dated February 8, 1971, the appellant wrote from Pudu Prison to the registrar of sessions court to furnish him with notes of evidence of the proceedings. As required by section 307(iv) of the Criminal Procedure Code (F.M.S. Cap. 6), within ten days after the copy of the grounds of decision has been served on the appellant, the appellant shall lodge with the trial court a petition of appeal in triplicate addressed to the court of a judge. In the present case, the grounds of decision were served on the wife of the appellant at No: B-28, 4¼ Mile, Ipoh Road, and by letter dated February 5, 1971 she returned the documents to the registrar, sessions court, intimating that the grounds of decision should be forwarded to the appellant at Pudu Prison. I fail to understand why the grounds of decision were served on the appellant's wife. If only the court officials concerned had taken the trouble to peruse the records of the proceedings, they would have known that the appellant was not on bail and was serving his imprisonment terms at Pudu Prison at all material times. Be that as it may, I also find that the provisions of section 307(iii) of the Criminal Procedure Code have not been complied with. The grounds of decision ought to have been left at the address mentioned in the notice of appeal or, alternatively, they should have been sent by registered post to the appellant at the said address.

Section 310 of the Criminal Procedure Code, which is relevant in this application, reads as follows: —

"A Judge may, on the application of any person desirous of appealing who may be debarred from so doing upon the ground of his not having observed some formality or some requirement of this Code, permit an appeal upon such terms and with such directions to the Magistrate and to the parties as such Judge shall consider desirable in order that substantial justice may be done in the matter."

In my view, that section clearly gives a judge the discretion to extend the period in which the appellant is to file his petition of appeal. As stated by Thomson C.J. (as he then was) in the case of *Veerasingam* v. *Public Prosecutor*[1] at page 79:

"The only fetter which section 310 places upon the exercise of the discretion which it gives to the judges is that it shall be exercised 'in order that substantial justice may be done.' Clearly, to exercise his discretion properly the judge must apply his mind to all the relevant material ....".

Having regard to all the relevant materials in this case, I find that in order that substantial justice may be done, the application to file petition of appeal out of time should be granted. I would, therefore, order that the petition of appeal be filed within ten days from receipt of the notes of evidence by the appellant or his solicitor, and that bail of $5,000 in one surety pending appeal be granted.

Motion granted.

Solicitors: *Morris Edgar & Co.*